IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 639 of 2004

in

SPECIAL CIVIL APPLICATION No 5115 of 2002

with

CIVIL APPLICATION No 491 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMDEVSINH ADITSINH GOHEL

Versus

DIVISIONAL CONTROLLER, G.S.R.T.C.

Appearance:

1. LETTERS PATENT APPEAL No. 639 of 2004
MR KISHOR M PAUL for the Appellant
MR ASHISH M DAGLI for the Respondent

CORAM : HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 15/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.N.BHATT)

1. Admit. Service of notice is waived by Mr. Ashish M. Gaghli, learned Advocate for the respondent.

2. Upon joint request and considering the special circumstances, the matter is taken up for final disposal today. This Letters Patent Appeal, under Clause-15 of the Letters Patent, is directed against the judgment dated 26-03-2003 of the learned Single Judge in Special Civil Application No.5115 of 2003, whereby the award dated 20-07-2001 made by the Labour Court in Reference (LCV) No.656 of 1999 came to be quashed and set aside, insofar it related to the back-wages and modifying the award, the punishment of stoppage of three increments with future effect came to be substituted by punishment of stoppage of five increments with future effect retaining the order of reinstatement.

3. After having heard the learned Advocates appearing for the parties and considering the entire conspectus of the factual projection emerging from the record of the present case and the text, tenor and texture of the award of the Labour Court as well as the judgment of the learned Single Judge, we are of the clear opinion that in the peculiar facts and circumstances, the denial of total back-wages and the amount of cost awarded by the learned Single Judge in the impugned judgment while enhancing the punishment with stoppage of five increments with future effect, cannot be said to be in any way, unjust, unreasonable, perverse or vulnerable, requiring our interference in exercise of our powers under Clause-15 of the Letters Patent without considering the preliminary objections with regard to the maintainability of the Letters Patent Appeal raised on behalf of respondent that the learned Single Judge has simply exercised the powers under Article 226 of the Constitution of India.

4. It is, really, very unfortunate that the appellant-original workman - has become guilty of suppression of material information from the scrutiny of the Court with a view to obtain undue advantage. Let there be a skeleton projection of facts, which would highlight the devilish and dubious trick and strategy employed by the employee.

5. The transfer Order dated 06-02-1996 of the respondent-workman from Surat to Valsad was not implemented. Not only that, instead of carrying out the transfer order, he abstained from work despite notices for resumption of duty issued by the respondent-Gujarat State Road Transport Corporation, which culminated into departmental proceedings for remaining unauthorisedly absent from duty between 09-03-1996 to 29-06-1996. After observing the necessary procedure of serving the charge-sheet and holding an inquiry, the resultant order was of dismissal from service on 27-11-1996.

6. Despite the fact that there was an order of dismissal from the service, upon a proved misconduct and for not having resumed the service or duty at the transferred place, the appellant approached the Industrial Tribunal by filing a Complaint No. 60 of 1996 by invocation of provisions of Section 33-A of the Industrial Disputes Act, 1947, alleging that there being a pending Reference No. 64 of 1996, he could not have been transferred from Surat to Valsad. The complaint came to be determined on 23-06-1998, but till then he did not disclose the factum of dismissal from the service to the Industrial Tribunal and, therefore, only on the facts as they were before it, in suppression of material and relevant information by the appellant-workman, the transfer order came to be quashed and set aside. As a result, the workman, then, approached this Court by filing Miscellaneous Civil Application No. 31 of 1999, complaining non-compliance of order of the Industrial Tribunal in Complaint No. 60 of 1996. He, inter-alia, contended that he was not allowed to resume the duty at the same place, as the transfer order stood quashed, without disclosing that there was a complaint pending and awaiting judicial adjudication under Section 33-A of the Industrial Tribunal Act, 1947. As such, the appellant-workman had already been dismissed from service by an Order dated 27-11-1996. All these facts and circumstances were placed on record before the learned Single Judge. There is no doubt about the fact that apart from misconduct established against the workman in the Departmental Inquiry, he was, also, grossly, guilty

of material suppression of important fact from the scrutiny of the Court. In these circumstances, the learned Single Judge has, rightly, exercised his discretion vested in him in not granting the back-wages and raising the quantum of punishment and the amount of costs.

7. The contention, now, before us, is that the learned Single Judge has not awarded any amount on the the application for payment of wages from the date of Order of Labour Court till the date of actual reinstatement, which is seriously submitted before us by Mr. K.M.Paul, learned Advocate for the petitioner. In our opinion, in such peculiar facts and special circumstances, when the workman is guilty of gross suppression of material facts, it is nothing, but an attempt to play fraud with the Court, we do not deem it necessary to consider this submission favourably.

8. We, therefore, deem it not necessary to interfere with the impugned judgment of the learned Single Judge in exercise of our powers under Clause-15 of the Letters Patent with the result that the appeal deserves only and only legal fate of dismissal. Accordingly, appeal shall stand dismissed with costs. This being so, there will be no orders in Civil Application.

(J. N. BHATT, J.)

(D. N. PATEL, J.)

/shamnath